

### REMARKS

Claims 1-11 are pending in this application. By this Response, claim 1 is amended to recite, in the preamble, that the method is implemented "on a computer system." Claim 10 is amended to recite a "computer" system. Support for these amendments may be found at least at page 7, lines 3-4. This amendment (1) does not raise any new issues requiring further search or consideration, (2) reduces the issues on appeal, as discussed hereafter, and (3) places the claims in better condition for appeal should an appeal be necessary. Accordingly, entry of the amendments to claims 1 and 10 is proper. Reconsideration of the claims is respectfully requested in view of the above amendment and the following remarks.

An amendment to the specification is made to remove an extra space before a comma in accordance with the requirements of the Final Office Action. No new matter has been added by the amendment to the specification.

#### **I. Telephone Interview**

Applicants thank Examiner Stevens and Primary Examiner Shaw for the courtesies extended to Applicants' representative during the March 14, 2005 telephone interview. During the telephone interview, the rejections under 35 U.S.C. 112, second paragraph and 35 U.S.C. 101 were discussed. The Examiners stated that they did not wish to discuss the art rejections because their position was finalized in the Final Office Action.

With regard to the rejections under 35 U.S.C. 112, second paragraph, Applicants asserted that one of ordinary skill in the art is well aware of what a "computer readable" or "computer useable" medium is and what constitutes a computer readable or computer useable medium. In response, the Examiners merely stated that the specification must include a definition of these terms in order for the use of these terms in the claims to be definite. The Examiners stated that the concern is with regard to whether such terms include transmission or carrier wave media.

Applicants' representative responded that such a position completely disregards the level of one of ordinary skill in the art and instead examines the claims in a vacuum. This is clearly an erroneous approach to examination since it is stated in many places within the MPEP that the examiner must examine the application in light of one of ordinary skill in the art. For example, Applicants have not defined what a "computer" is, what a "table" is, or what a "cell" of a spreadsheet is, yet one of ordinary skill in the art would understand the usage of these terms and the scope associated with these terms even though the Applicants have not presented a formal definition of these terms in the specification. The Examiner has not asserted that these terms are indefinite because one of ordinary skill in the art understands what these terms mean and what their scope is. Similarly, the terms "computer readable medium" and "computer useable medium" are well known to those of ordinary skill in the art. The MPEP even uses such terms as exemplary of claim language directed to statutory subject matter.

Whether or not the terms "computer readable medium" or "computer useable medium" encompasses carrier waves or transmission medium is irrelevant to a determination as to whether the terms are definite or not. Such considerations are directed to the breadth of the claim language, not to the definiteness of the claim language. Moreover, nowhere in the MPEP is there any statement that claim language directed to carrier waves or transmission medium is indefinite and defines non-statutory subject matter.

The Examiners stated that such language that encompasses carrier waves or transmission medium would be indefinite because carrier waves and transmission media are not physical elements. Applicants respectfully disagree. Carrier waves and transmission media are physical media. While they are not immediately perceivable by the human eye, they are physical. Moreover, there is no basis in the MPEP for holding terminology indefinite for lack of physicality. In addition, there is no statement anywhere in the MPEP to the effect that carrier waves or transmission media are non-statutory. To the contrary, as set forth herein below, the MPEP clearly states that functional descriptive material in a computer readable media, which would encompass carrier waves and transmission media, is statutory.

The Examiners essentially made the same arguments when addressing the 35 U.S.C. 101 rejection with regard to the computer readable and computer useable medium claims, e.g., claim 11. Moreover, when pressed to support such a position, the Examiners merely stated that the MPEP has been changed to not include the section, i.e. section 2106(IV)(B)(1), stating that computer readable medium are statutory and that the case law was changing. As a result, the Examiners stated that they were going to stand by their rejection. Such a position is improper because (1) the MPEP has not been changed and the applicable case law has not changed; and (2) it makes Applicants have to respond to supposed case law and supposed MPEP text that is not yet in existence.

Applicants' representative has checked his own MPEP and the MPEP available from the Patent Office website and has verified that MPEP section 2106(IV)(B)(1) has not been changed as of the time of the Final Office Action, the telephone interview, and the filing of this Response, to eliminate the portion stating that functional descriptive material in a computer readable medium is statutory. Nor are Applicants aware of any case law that overturns the holding in *In re Lowry*, referenced below and used as a basis in the MPEP. Thus, despite the Examiners' assurances that "things are changing," they have not in fact changed and the Examiners must examine the claims based on the status of the MPEP and case law at the time of the examination, not what the MPEP and case law might say in the future. If the Examiners have a basis for their position, they must clearly state what it is with particularity, rather than relying on supposed changes that may or may not be made in the future.

The substance of the telephone interview with regard to other issues discussed is summarized in the following remarks.

## II. Amendments to Claims

The amendments to claims 1 and 10 are submitted in order to reduce the issues pending in the prosecution of this application. While Applicants disagree with the Examiner's position with regard to the 101 issues raised in the Final Office Action, in an effort to reduce issues, Applicants have amended claim 1 to recite "a method, implemented on a computer system" as suggested by Examiner Shaw during the